

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| Illinois Commerce Commission |) | |
| On Its Own Motion |) | Docket No. 01-0485 |
| |) | |
| Adoption of 83 Ill. Adm. Code Part 732. |) | |

**REPLY BRIEF ON EXCEPTIONS ON REHEARING
OF VERIZON NORTH INC. AND VERIZON SOUTH INC.**

Verizon North Inc. and Verizon South Inc. (collectively “Verizon”) respectfully submit this Reply Brief on Exceptions on Rehearing to the Proposed Interim Order on Rehearing (“Proposed Order”) to the Illinois Commerce Commission (the “Commission”), addressing Code Part 732 (“Part 732”), 83 Ill. Adm. Code Part 732, pursuant to the schedule established by the Administrative Law Judge.

I.
Introduction

The Commission’s purpose in this proceeding should be to balance the interests of consumers and local exchange carriers (“LECs”), and to devise regulations that achieve the Commission’s objectives without imposing unnecessary regulatory obligations, costs and burdens on LECs. In Verizon’s Brief on Exceptions on Rehearing (“BOE on Rehearing”), Verizon identified three areas of the Proposed Order where this proper regulatory balance was not maintained and recommended appropriate modifications, namely (1) the definition of “Emergency Situation” in Section 732.10; (2) the customer notification provisions of Section 732.50; and (3) the reporting requirements of Section 732.60. Verizon maintains the positions advanced in its BOE on Rehearing, and by reference reiterates, and respectfully requests the Commission’s continued consideration of, the arguments contained in its BOE on Rehearing. Verizon also advances herein its support of the positions of Illinois Bell Telephone Company

(“Ameritech”) and the Illinois Telecommunications Association (“ITA”) in regard to the definition of “Emergency Situation.” Verizon limits the remainder of this response to certain modifications to the Proposed Order recommended by the Staff of the Commission (“Staff”), and the City of Chicago, the People of the State of Illinois, and the Citizens Utility Board (collectively “GCI”).

II. **Argument**

A. Modification Of The Proposed Order In Connection With The Definition Of “Emergency Situation” In Part 732.10

Ameritech and the ITA advance compelling reasons on exception for the Commission to modify the Proposed Order’s definition of “Emergency Situation” to include strikes and work stoppages. (Ameritech BOE on Rehearing at 1-8; ITA BOE on Rehearing at 1-11.) Ameritech correctly explains that the Proposed Order’s conclusion is contrary to the Commission’s previous order on this issue, the Commission’s order granting rehearing and the ALJ’s own bench memorandum to the Commission regarding rehearing. Both Ameritech and the ITA explain that the record contains no evidence that would support a Commission finding that strikes and work stoppages should be excluded from the definition of “Emergency Situation.” Finally, Ameritech and the ITA correctly note that the position adopted in the Proposed Order is contrary to the law on preemption and results in poor public policy. Verizon supports each of the positions advanced by Ameritech and the ITA on this issue, and respectfully requests that the Commission make the necessary modifications to include strikes and work stoppages within the definition of “Emergency Situation” in its final order.

B. Modifications To The Proposed Order In Connection With The Consumer Education Requirements Imposed By Part 732.50

As noted in Verizon's BOE on Rehearing, the Proposed Order recognizes the redundancy of the existing quarterly bill message requirement and, in response to this concern, limits the frequency of the required bill messages to bi-annually. (Proposed Order at 48.) Verizon noted this change as a movement in the right direction, but explained that a bi-annual bill message requirement maintains the same flaws as a quarterly requirement, albeit not to the same extreme. (Verizon BOE on Rehearing at 11.) Verizon recommended that the Commission adopt a requirement that is no more burdensome than necessary to achieve the Commission's consumer education goals by adopting a single, annual bill message requirement. As noted above, Verizon continues to maintain this position.

Notably, no party on exception recommended that the Commission revert to the quarterly bill message requirement contained in the existing Part 732. However, Staff does recommend certain changes to the language of the Proposed Order in regard to the consumer education requirements. Verizon disagrees with some of Staff's proposed changes on exception but agrees with others. Each of Staff's relevant proposals is addressed in turn.

1. The Commission Should Not Adopt Staff's Proposed Rationale To Support A Multiple Bill Message Requirement

Staff recommends on exception that the Commission adopt and incorporate into its final order a rationale to support the Proposed Order's multiple, bi-annual bill message requirement that is both unpersuasive and unsupported by the evidentiary record. In particular, Staff continues to maintain a position that an unconstrained amount of space is available for the inclusion of consumer education messages on LECs' bills. (Staff BOE on Rehearing at 3-4.) Staff further recommends that the Commission adopt language providing that "other customer

education requirements do not provide enough ‘penetration’ to sufficiently apprise customers of the newly legislated rights and obligations of Section 13-712.” (*Id.* at 4.) The Commission should not adopt Staff’s proposed rationales in support of a bi-annual bill message requirement.

The Commission should reject Staff’s proposal to adopt language that disregards the evidence of record on the limit of available message slots. Both Verizon and Ameritech presented witnesses who provided sworn testimony on the existence of 72 and 84 available bill message slots per year, respectively. (Boswell Dir., Verizon Ex. 1.0 at 7; Ameritech Illinois Ex. 2.0 at 7.) Staff characterizes the identified numbers as arbitrary (*see* Staff Reply Brief at 26), but fails to provide any evidence that would demonstrate that the parties’ sworn testimony is incorrect and not representative of the LECs’ actual availability of message slots. Nor did Staff present any evidence addressing the costs that would be imposed on carriers to expand the number of message slots, or the appropriateness of expanding the number of message slots, such as the potential adverse reaction of consumers in response to bill over-crowding. (*See* Ameritech Initial Brief at 8 (explaining that Ameritech has researched customer preferences and behavioral limitations and found that the greater amount of messages that appear on a bill the more likely consumers are to ignore the material).) Staff’s mere criticism of the record evidence is insufficient to support a finding of a greater availability of message slots than testified to by the LECs’ witnesses. In the absence thereof, the Commission should not and must not adopt Staff’s proposed rationale, but should considered the limited availability of message slots as a factor in determining the appropriateness of imposing a multiple bill message requirement.

The Commission should also decline to adopt Staff’s reasoning that a *single* bill message in conjunction with the other consumer education requirements in Part 732.50 would not provide sufficient “penetration.” First, there is no persuasive evidence to support this supposition.

Second, in addition to any bill message requirement, consumers also will be educated through a number of different means and mechanisms. These include messages in consumer directories and web sites, and the provisioning of information on each and every call made to a Verizon customer service representative where a customer seeks a repair of basic local exchange service, installation of such service, or the scheduling of an appointment. Indeed, the latter noted requirement, *i.e.*, to provide customers with the relevant information at the time of each and every customer service call, is the most important. These customers who request initial or repair service are the ones who may actually become entitled to refunds under the relevant statutory provisions. Thus, this requirement is targeted directly to those consumers who may be in a position to take advantage of the information being communicated. No other informational requirement is as targeted to the relevant population. Staff's position that such a targeted informational requirement in conjunction with the other noted consumer educational requirements and a *single*, annual bill message is insufficient to achieve adequate penetration is simply unpersuasive, not supported by compelling evidence and should not be adopted.

Ultimately, the Commission should recognize the flaws in Staff's reasoning and modify the Proposed Order to impose a single, annual bill message requirement. Verizon supports the Commission's efforts to inform consumers of their rights. However, the Commission should weigh the regulatory costs and burdens that are imposed on LECs against the additional consumer benefits that are likely to result from imposing a multiple instead of a single bill message requirement. In particular, in addressing the potential consumer benefits, the Commission should consider the adequacy of a single bill message requirement in conjunction with the other consumer educational requirements identified above as well as the reality of diminishing returns—*i.e.*, the amount of additional consumer benefit declines with each

additional bill insert. (*See* Staff BOE on Rehearing at 3 (agreeing that the concept of diminishing returns applies to bill messages).) Such an examination will lead to the conclusion that a single, annual bill message in conjunction with the other identified consumer education requirements is sufficient to achieve the Commission’s regulatory objective, and that the imposition of a multiple bill message requirement would impose unnecessary costs on LECs while not resulting in a substantial increase in consumer benefit.

2. The Commission Should Adopt Staff’s Request To Clarify That Subparts (a) And (b) Do Not Impose Concurrent Obligations

Staff recommends an important and necessary clarification. The requirements imposed under subparts (a) and (b) of Part 732.50 should not be construed as concurrent obligations. (Staff BOE on Rehearing at 1-3.) Construing the two as imposing concurrent requirements would result in an obligation to distribute *eight* bill messages annually, double the number the Proposed Order appears to construe the current Part 732 as requiring, i.e., quarterly, and quadruple the number recommended by the Proposed Order, i.e., bi-annually. Staff’s recommended clarification that the requirements imposed by subpart (a) end at the time updated directories are published and that the requirements imposed by subpart (b) commence at the time updated directories are published should be adopted.

3. The Commission Should Adopt Staff’s Request To Eliminate The Proposed Order’s Requirement To Provide “Detailed Information”

Verizon also supports Staff’s concerns in connection to the Proposed Order’s requirement to provide “detailed information” in bill messages. (Staff BOE on Rehearing at 4-5.) It is unclear what type of detail the Proposed Order would require, and it is unlikely that the limited space available on LECs’ bills would accommodate a significant amount of detailed information. (*See Id.*) In addition, carriers may encounter difficulties and additional costs to change a

message required under subpart (a) to that required under subpart (b) of Part 732.50. (*See* Ameritech BOE on Rehearing at 8-9, n.3.) The standard language developed under subpart (c) should be found as appropriate for use to comply with both subparts (a) and (b) of Part 732.50.

C. Modifications To The Proposed Order In Connection With The Reporting Requirements Imposed By Part 732.60

Verizon concurs with Ameritech that the Proposed Order's apparent adoption of the GCI's position advanced for the first time on rehearing that the reporting requirements should be further broken-down to detail certain time intervals associated with repairs and installations is legally improper and should not be adopted in the Commission's final order. (*See* Proposed Order at ¶186.) As Ameritech notes in its BOE on Rehearing, GCI did not seek rehearing on this issue, and the Commission cannot legally reopen issues that were not subject to the grant of rehearing. (Ameritech BOE on rehearing at 10, n4). The controlling legal precedent is correctly identified by Ameritech and not repeated herein. (*See Id* at 2-7.) Accordingly, if the Commission decides to adopt reporting requirements applicable to all LECs, the Commission should only require the total number be reported for each category, *i.e.*, repairs, installation and appointments, as originally provided for in the Commission's rule prior to reopening.

GCI also recommends on exception that the Commission advance the Proposed Order's initial reporting date from July 30, 2003, to July 1, 2002. (GCI BOE on Rehearing at 5-8.) It is Verizon's position that the Commission should not reach this issue. The adoption of a rule would impose reporting requirements on all carriers throughout the State regardless of any past history with service quality problems even though the evidence of record does not support the need for such requirements. Rather, the evidence of record demonstrates that the vast majority of LECs in the State are providing quality basic local exchange service. There is simply no need

to impose on all carriers the burdens and costs associated with the Proposed Order's reporting requirements, especially when Staff can obtain, and in fact has obtained, the relevant information without the existence of a formal rule. (Jackson Tr. at 236-38; McClerren Tr. at 285.) Instead of adopting GCI's proposal, the Commission should modify the Proposed Order to remove the reporting requirements and, instead, address the service quality issues of any one LEC outside of a rule, *i.e.*, through an investigation or the imposition of requirements, if necessary, on an individual basis.

III. Conclusion

WHEREFORE, for each and all of the foregoing reasons, Verizon respectfully requests that the Commission act on the recommendations on exception of Staff and GCI in the manner set forth above, and for any and all other appropriate relief.

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Respectfully submitted,

VERIZON NORTH INC. AND
VERIZON SOUTH INC.

By: _____
One of their attorneys

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CERTIFICATE OF SERVICE

I, John E. Rooney, hereby certify that I served a copy of the Reply Brief on Exceptions on Rehearing of Verizon North Inc. and Verizon South Inc. upon the service list in Docket No. 01-0485 by email on April 23, 2002.

John E. Rooney